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# **Supreme Court of the United States**

**OCTOBER TERM, 1951**

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**NO. 431.**

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**TESSIM ZORACH and ESTA GLUCK, Appellants,**

**v.**

**ANDREW G. CLAUSON, JR. et al., constituting the  
Board of Education of the City of New York, and  
FRANCIS T. SPAULDING, Commissioner of  
Education of the State of New York.**

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**On Appeal from the Court of Appeals of the State of  
New York.**

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**BRIEF FOR COMMONWEALTH OF PENNSYLVANIA  
AS AMICUS CURIAE**

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## BRIEF FOR COMMONWEALTH OF PENNSYLVANIA AS AMICUS CURIAE

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### RELEASED TIME IN PENNSYLVANIA

Section 1546 of the Pennsylvania Public School Code of 1949 (Pamphlet Laws 49, p. 30), 24 Purdon's Penna. Stat. Section 15-1546) provides in regard to released time:

"Any board of school directors of any school district shall have power to enter into suitable arrangement with a religious group, or organization of responsible citizens resident in the school district, who are interested in organizing part-time week-

day religious education for school pupils. In such cases the board of school directors shall have the power to adopt such rules and regulations for the release from school sessions of those pupils whose parents, or surviving parent, or guardian, or other person having legal custody of such pupil, desires to have them attend a class to receive religious education, in accordance with their religious faith for not more than one hour a week, subject, however, to such conditions and the keeping of such records of attendance at such classes and other records for the inspection of school authorities as the board shall deem proper. No part of the cost and expense of such religious instruction shall be paid out of public school funds."

The compulsory education law of Pennsylvania requires a pupil to attend the public schools for the full period of time prescribed by the statute. Unless the parent asks for his release, the pupil remains in school throughout the number of hours required.

The efficient cause of the release of the child under the above statute is, therefore, the request of the parent made in the exercise of the parent's right to supervise the religious training of the child.

In opinion No. 584, dated July 25, 1948, the attorney general of Pennsylvania, conforming to the decision of this court in the *McCollum* Case, advised the Superintendent of Public Instruction that released time for religious instruction during school hours in public school buildings violated the Federal Constitution (Penna. Op. Atty. Gen., 1947-1948, page 150).

In released time there is now no use of the school buildings for religious instruction and no expenditure of public funds for such purpose.

If no such request is made by the parent, the child is required to remain in the public schools in order to comply with the compulsory education law. No part of this required time is spent in religious training in the public school building, as was done in the *McCollum* case.

The parent's request for release frees the pupil entirely from the operation of the public school law for the limited period of released time.

The school authorities do not compel or persuade the pupil to attend a church school. They merely accede to the request of the parent.

The school authorities do get report of the attendance of the pupil at the church school. This is required merely as a precaution to insure that the compulsory education law is not being evaded by a wayward pupil or an indulgent parent. The effective enforcement of the compulsory education law requires the school to get this report. Attendance at a church school is at regular recurring intervals, and in view of the greater total time consumed the report is necessary. In other respects released time to attend a church school does not differ from released time for a pupil to take a music lesson or keep a dental appointment.

*McCollum v. Board of Education*, 333 U. S. 203, (1948) differs in that—



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(1) Sectarian religious classes were conducted in the regular class rooms of the public school building;

(2) The religious teachers who furnished such instruction were subject to the approval and supervision of the superintendent of schools;

(3) A particular sect was required to get the permission of the school superintendent to supply a teacher and the superintendent had the authority to determine whether it was practical for that sect to teach during the school session;

(4) Public school teachers distributed to pupils request cards supplied by the church groups.

The Pennsylvania statute quoted above, provides that "no part of the cost and expense of such religious instruction shall be paid out of public school fund".

As already shown, there is now no requirement that such religious classes be held in the school building and the practice has been to hold them at a place furnished by the religious denomination.

Respectfully submitted,

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